

*Example 3.* Pursuant to an agreement with Company Y (which is not an agency agreement described in subparagraph (3) of this § 32.2(e)), Insurance Company Z makes payments on account of sickness or accident disability to Y's employees. Such payments are not made under a workmen's compensation law, the Railroad Retirement Act of 1974, or the Railroad Unemployment Insurance Act for days of sickness. Z does not notify Y of the amount of such payments. Z is treated as the employer with respect to such payments.

(f) *Penalties and interest on payments made from January 1, 1982 to June 30, 1982.* No penalty under section 6656(a) or interest under section 6601 will be assessed for the failure to make timely payments of the tax imposed by section 3201, 3211, or 3221 on payments made on account of sickness or accident disability, which payments of tax are made after December 31, 1981, and before July 1, 1982, to the extent that the failure is due to reasonable cause and not willful neglect.

(g) *Special rules.* (1) For purposes of subdivision (iii) of paragraph (e)(2), the last employer for whom the employee worked prior to becoming sick or disabled or for whom the employee was working at the time he became sick or disabled shall be deemed to be the employer for whom services are normally rendered, provided that such employer made contributions on behalf of such employee to the plan or system under which the employee is being paid.

(2) The application of the provisions of subparagraph (1) of this paragraph (g) may be illustrated by the following examples:

*Example 1.* B is employed by Company M. B becomes sick and is absent from work for 3 months. While B is absent from work, he receives sick pay from Insurance Company N pursuant to a plan established by M and to which M has made contributions on behalf of B. M is the employer for whom services are normally rendered by B.

*Example 2.* C is employed by Company O and is also employed on a part-time basis by Company Q. C becomes sick while at work at Q's place of business. C is absent from work for 3 months. While C is absent from work, he receives sick pay from Insurance Company P pursuant to a plan established by O and to which O has made contributions on behalf of C. O is the employer for whom services are normally rendered by C.

*Example 3.* D is a member of a labor union whose members receive health and welfare benefit payments from a trust fund which is

supported by the contributions of the various employers who employ the labor union's members. D has been employed by Company R for 4 days when he becomes sick and is absent from work for 3 months. While D is absent from work he receives sick pay from his union's trust fund to which R has made contributions on D's behalf. R is the employer for whom services are normally rendered by D.

(3) For purposes of paragraph (e) of this section, in the case of payments on account of sickness or accident disability made to employees by a third party insurer pursuant to a contract of insurance with a multiemployer plan which is obligated to make payments on account of sickness or accident disability to such employees pursuant to a collectively bargained agreement, if the third party insurer making the payments complies with the requirements of subdivisions (i) and (ii) of subparagraph (2) of paragraph (e) and notifies the plan of the amount of compensation paid on which tax was withheld and deposited within the time required for notification of the employer under subparagraph (2) of paragraph (e), then the plan (and not the third party insurer) shall be required to pay the tax imposed by section 3221 and to comply with the requirements of section 6051 and §§ 31.6051-1 and 31.6051-2 with respect to such payments unless, within 6 business days of the receipt of such notification, the plan notifies the employer for whom services are normally rendered of the amount of the compensation on which tax was withheld and deposited. If the plan provides such notice to the employer, the employer (and not the plan) shall be required to pay the tax imposed by section 3221 and to comply with the requirements of section 6051 and §§ 31.6051-1 and 31.6051-2 with respect to the compensation.

[T.D. 7823, 47 FR 29225, July 6, 1982, as amended by T.D. 7867, 48 FR 793, Jan. 7, 1983]

## PART 34 [RESERVED]

**PART 35—EMPLOYMENT TAX AND  
COLLECTION OF INCOME TAX AT  
SOURCE REGULATIONS UNDER  
THE TAX EQUITY AND FISCAL RE-  
SPONSIBILITY ACT OF 1982**

Sec.

35.3405-1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.

35.3405-1T Questions and answers relating to withholding on pensions, annuities, and certain other deferred income (temporary regulations).

AUTHORITY: 26 U.S.C. 6047(e), 7805; 68A Stat. 917; 96 Stat. 625; Public Law 97-248 (96 Stat. 623).

Section 35.3405-1 also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

Section 35.3405-1T also issued under 26 U.S.C. 3405(e)(10)(B)(iii).

**§ 35.3405-1 Questions and answers relating to withholding on pensions, annuities, and certain other deferred income.**

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1986, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Public Law 97-248) (TEFRA).

a-1 through d-34 [Reserved]. For further guidance, see § 35.3405-1T.

d-35. Q. *Through what medium may a payor provide the notice required under section 3405 to a payee?*

A. A payor may provide the notice required under section 3405 (including the abbreviated notice described in d-27 of § 35.3405-1T and the annual notice described in d-31 of § 35.3405-1T) to a payee on a written paper document. However, see § 1.401(a)-21 of this chapter for rules permitting the use of electronic media to provide applicable notices to recipients with respect to retirement plans and individual retirement plans.

[T.D. 8873, 65 FR 6007, Feb. 8, 2000; 65 FR 17149, Mar. 31, 2000, as amended by T.D. 9294, 71 FR 61877, Oct. 20, 2006]

**§ 35.3405-1T Questions and answers relating to withholding on pensions, annuities, and certain other deferred income (temporary regulations).**

The following questions and answers relate to withholding on pensions, annuities, and other deferred income under section 3405 of the Internal Revenue Code of 1954, as added by section 334 of the Tax Equity and Fiscal Responsibility Tax Act of 1982 (Pub. L. 97-248) (TEFRA):

- a. In general.
- b. Periodic payments.
- c. Nonperiodic distributions.
- d. Notice and election procedures.
- e. Reporting and recordkeeping.

**A. IN GENERAL**

a-1. Q. *How did TEFRA change the law on withholding requirements for pensions, annuities, and other deferred income?*

A. TEFRA amended the Internal Revenue Code to impose withholding requirements on designated distributions paid after December 31, 1982. Further, although under prior law individuals could elect to have Federal income tax withheld from certain pension and annuity payments, TEFRA requires withholding on all designated distributions unless the payee elects not to have withholding apply.

a-2. Q. *What type of payment is a designated distribution that is subject to the new withholding rules?*

A. A designated distribution is any distribution or payment from or under an employer deferred compensation plan, an individual retirement plan (as defined in section 7701(a)(37)), or a commercial annuity. However, a designated distribution does not include any portion of a distribution which it is reasonable to believe is not includible in the gross income of the payee. For rules concerning when it is reasonable to believe that all or part of a distribution is not includible in the gross income of the recipient, see questions a-24 through a-33. In addition, a payment or distribution that is treated as wages under section 3401(a) is not a designated distribution subject to the new withholding rules. For examples of these payments, see questions a-18 through a-23.